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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,872	11/20/2003	Jeff Weller	061300-0789	5637
26371 7590 03/19/2007 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306			EXAMINER LOWE, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3652	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/716,872		WELLER ET AL.	
	Examiner		Art Unit	
	M. Scott Lowe		3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 14-18, 26, 27 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-18, 26, 27 and 29-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14,26, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claims 14,26, applicant states that the reinforcing steel creates a wear zone in an area not reinforced. This is not true since this non-reinforced "wear zone" is already there with or without the reinforcing steel.

Re claim 26, applicant states that the grid boxes are mounted on an outbound portion and that the support arms pivotally attach to the grid boxes but then states that the outbound portion is outside of where the connection pivotal connection is. It appears that the claim is stating that the grid boxes are located both all outbound and all inbound. For sake of examination it is assumed that the grid boxes are only partially located outbound and have a part that is located inbound, this inbound part being where the support arms attach.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,27,29,30,32,33, are rejected under 35 U.S.C. 102(b) as being anticipated by Young (US 5,722,810).

Re claims 1,2,27,29,30,32,33, Young teaches wheel-lift assembly for wreckers for towing a target automobile, the assembly comprising:

- a crossbar assembly 25;
- a pair of support arms 34A,34B, each of said support arms being movably attached to the crossbar assembly, the support arms being spaced apart from each other;
- a pair of actuating devices 36A,36B, connected to an outbound portion of said crossbar assembly, each of said actuating devices being operatively connected to one of said support arms; and
- a pair of over-center locking mechanisms 40A,40B, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms.

Claims 1,8,9,27,29, are rejected under 35 U.S.C. 102(b) as being anticipated by Nolasco (US 6,139,250).

Re claim 1,27,29, Nolasco teaches wheel-lift assembly for wreckers for towing a target automobile, the assembly comprising:

- a crossbar assembly 12;
- a pair of support arms 20a,21a, each of said support arms being movably attached to the crossbar assembly, the support arms being spaced apart from each other;
- a pair of actuating devices 27,28, connected to said crossbar assembly, each of said actuating devices being operatively connected to one of said support arms.

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Re claim 8, Nolasco teaches the actuating devices 27,28 being hydraulic cylinders.

Re claim 9, Nolasco teaches said crossbar assembly 25 includes a pivot C for mounting the target automobile on the wheel-lift assembly when the length of said target automobile is at an angle of about zero degrees to about ninety degrees from the length of said wrecker.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-18, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolasco (US 6,139,250).

Re claims 14-17, Nolasco teaches reinforcing material (18,19,22,23,etc.) proximate the ends of the arms, which in effect create a wear zone in areas not reinforced. Nolasco is silent on the type of material used, but it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the material steel for strength and cost considerations.

Re claim 18, Nolasco does not teach a specific strength but it would have been obvious to one of ordinary skill in the art at the time the invention was made to have

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made the strength 100ksi or any other amount in order to perform properly and handle heavy loads.

Claims 2,5-7,10,11,26,31, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolasco (US 6,139,250) in view of Young (US 5,722,810).

Re claim 2, Nolasco teaches wheel-lift assembly for wreckers for towing a target automobile, the assembly comprising:  
a crossbar assembly 12;  
a pair of support arms 20a,21a, each of said support arms being movably attached to the crossbar assembly, the support arms being spaced apart from each other;  
a pair of actuating devices 27,28, connected to said crossbar assembly, each of said actuating devices being operatively connected to one of said support arms.

Nolasco does not teach over-center locking mechanisms. However, Young teaches a pair of over-center locking mechanisms 40A,40B, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms in order to provide a safety mechanism (column 3, lines 64-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by the general teachings of Young to have a pair of over-center locking mechanisms each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms in order to provide a safety mechanism.

Re claim 5, Nolasco as already modified by Young teaches the crossbar

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assembly comprising a crossbar and a pair of opposed grid boxes 16a,17a movably mounted to the crossbar;

wherein the support arms 20a,21a, are pivotally attached to the grid boxes; and

wherein each of the over-center locking mechanisms are disposed within one of the grid boxes.

Re claims 6,7, Nolasco as already modified by Young in claim 2 teaches the support arms 20a,21a are pivotally connected to the crossbar assembly 25; wherein each of the over-center locking mechanisms comprise a first 38 and a second 39 link, a first end of the first link 38 being pivotally connected to a first end of the second link 39, a second end of the first link being pivotally connected to the crossbar assembly 25, and a second end of the second link being pivotally connected to one of the support arms, and wherein one of the actuating devices is pivotally connected between the first and second ends of one of the links 38.

Re claim 10, Nolasco does not teach substantially fully enclosing each actuating device in a grid box. Young teaches substantially fully enclosing each actuating device in a grid box for safety. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by Young to substantially fully enclose each actuating device in a grid box for safety.

Re claim 11, Nolasco does not teach having and substantially fully enclosing over-center locking mechanisms in a grid box. However, Young teaches a pair of over-center locking mechanisms 40A,40B, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms and substantially fully

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enclosing the over-center locking mechanisms in a grid box in order to provide a safety mechanism (column 3, lines 64-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by Young to have a pair of over-center locking mechanisms, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms and substantially fully enclosing the over-center locking mechanisms in a grid box in order to provide a safety mechanism.

Re claim 26,31, Nolasco does not teach having and substantially fully enclosing over-center locking mechanisms in a grid box. However, Young teaches a pair of over-center locking mechanisms 40A,40B, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms and substantially fully enclosing the over-center locking mechanisms in a grid box in order to provide a safety mechanism (column 3, lines 64-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by Young to have a pair of over-center locking mechanisms, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms and substantially fully enclosing the over-center locking mechanisms in a grid box in order to provide a safety mechanism.

Nolasco teaches reinforcing material (18,19,22,23,etc.) proximate the ends of the arms, which in effect create a wear zone in areas not reinforced. Nolasco is silent on the type of material used, but it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the material steel for strength



and cost considerations.

Claims 3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolasco (US 6,139,250) in view of Holmes (US 4,958,980).

Re claim 3, Nolasco as modified does not teach a substantially L-shaped lifting arm having an extension arm segment and an engaging arm segment, said extension arm segment adjustably connected to a respective support arm, each of said engaging arm segments being substantially transverse to the extension arm segment. However, Holmes (figure 2) teaches a substantially L-shaped lifting arm having an extension arm segment and an engaging arm segment, said extension arm segment adjustably connected to a respective support arm, each of the arm segments being substantially transverse to the extension arm segment in order to facilitate easier wheel connections (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by the general teaching of Holmes to have a substantially L-shaped lifting arm having an extension arm segment and an engaging arm segment, said extension arm segment adjustably connected to a respective support arm, each of the arm segments being substantially transverse to the extension arm segment in order to facilitate easier wheel connections.

Re claim 4, Nolasco as already modified teaches the extension arm segments are slidably connected to the respective support arms.

Claims 34,35, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolasco (US 6,139,250) in view of Weller (US 5,350,271).

Re claims 34,35, Nolasco teaches wheel-lift assembly for wreckers for towing a target automobile, the assembly comprising:

a crossbar extending in a substantially lateral direction 12;  
first and second support arms 20a,21a, each of said support arms pivotally supported at the crossbar assembly, the support arms being spaced apart from each other in the substantially lateral direction and visually separating the crossbar into an inbound portion, a first outbound portion and a second outbound portion, the inbound portion being located between the ends of the first and second support arms, the outbound portions being located at opposite sides of the respective first and second support arms;  
a first actuating device 27 supported and operatively connected to the first support arm;  
and  
a second actuating device 28 supported and operatively connected to the second support arm.

Nolasco does not teach the actuating devices supported at the claimed laterally outbound portions. Weller teaches actuating devices 20 supported at laterally outbound portions to allow greater retraction of the support arms making the device more compact. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by the general teaching of Weller to have the actuating devices supported at laterally outbound portions to allow greater

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retraction of the support arms making the device more compact.

Claims 36,37,38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolasco (US 6,139,250) in view of Young (US 5,722,810) and Weller (US 5,350,271).

Re claim 36, Nolasco does not teach substantially fully enclosing each actuating device in a grid box. Young teaches substantially fully enclosing each actuating device in a grid box for safety. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by Young to substantially fully enclose each actuating device in a grid box for safety.

Re claim 37, Nolasco as already modified by Young teaches access panels (figure 3 of Nolasco, figures 6,8,etc., of Young).

Re claim 38, Nolasco does not teach over-center locking mechanisms. However, Young teaches a pair of over-center locking mechanisms 40A,40B, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms in order to provide a safety mechanism (column 3, lines 64-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nolasco by the general teachings of Young to have a pair of over-center locking mechanisms each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms in order to provide a safety mechanism.

Claims 34-38, are rejected under 35 U.S.C. 103(a) as being unpatentable over

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Nolasco (US 6,139,250) in view of Weller (US 5,350,271).

Re claims 34-38, Young teaches wheel-lift assembly for wreckers for towing a target automobile, the assembly comprising:

a crossbar extending in a substantially lateral direction 25;  
first and second support arms 34A,34B; each of said support arms pivotally supported at the crossbar assembly, the support arms being spaced apart from each other in the substantially lateral direction and visually separating the crossbar into an inbound portion, a first outbound portion and a second outbound portion, the inbound portion being located between the ends of the first and second support arms, the outbound portions being located at opposite sides of the respective first and second support arms;  
a first actuating device 36A supported and operatively connected to the first support arm; and a second actuating device 36B supported and operatively connected to the second support arm.

a pair of over-center locking mechanisms 40A,40B, each connected to said crossbar assembly, to one of the actuating devices, and to one of said support arms.

Young does not teach the actuating devices supported at the claimed laterally outbound portions. Weller teaches actuating devices 20 supported at laterally outbound portions to allow greater retraction of the support arms making the device more compact. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Young by the general teaching of Weller to have the actuating devices supported at laterally outbound portions to allow greater retraction of the support arms making the device more compact.

### ***Conclusion***

Applicant's arguments with respect to claims 34-38 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's remaining arguments filed 1/16/07 have been fully considered but they are not persuasive.

Applicant argued that the phrase "wear zone" refers to an indicator feature. However, the term "wear zone" is a common term in the art and applicant did not make a clear statement in the specification that wear zone was being redefined as be the indicator feature instead of the normally understood definition of a "wear zone". Mere use of the term in the specification is not adequate to provide a clear redefining of a common term. Applicant argued that claims 1,26,27,&34 claim actuators at a laterally outbound portion of the crossbar. However only claim 34 actually claims this and thus the new teaching of Weller was supplied. The other claims do not actually state that the actuators are located outbound. For instance the term "connected to" is not exact and can include connection through intermediate elements.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is (571) 272-6929. The examiner can normally be reached on 6:30am-4:30pm M-W; Th work offsite.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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